

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

**FILED**

JAN 09 2004


  
CLERK

ALICE TORRES

Plaintiff,

v.

BEVERLY ENTERPRISES, INC.; TRAVELERS  
INSURANCE COMPANY; INSURANCE  
COMPANY OF THE STATE OF  
PENNSYLVANIA; and CONSTITUTION STATE  
SERVICES, f/k/a CONSTITUTION STATE  
SERVICE COMPANY

Defendants.

CIV. 01-5056

**PLAINTIFF'S AMENDED  
TRIAL EXHIBIT LIST**

PLTF EX #	BATES	DESCRIPTION OF EXHIBITS	Travelers Stip Admission	Travelers Stip Foundation
1	PLTF 971-972	Alice's Performance Eval (3/27/97)	✓	
2	PLTF 987-991	Alice's Performance Eval (11/19/98)	✓	
3	PLTF 149-157	Community Health Records	✓	
4	DEF536-37	Dr. Simonson Medical Records	✓	
5	PLTF 7	Employer's First Report of Injury	✓	
6	PLTF 1450-56	Alice's Recorded Statement with Carl Young and Index Report	✓	
7	PLTF 2604-09	Dr. Anderson Medical Records	✓	
8	PLTF 369-373	CSS Claim Notes	✓	
9	DEF 556-557	CSS Claim Notes	✓	
10	PLTF 851	Alice's handwritten resignation letter dated 5/3/99	✓	
11	PLTF 482	Black Hills Surgery Note to Alice 6/22/99	✓	
12	PLTF 1	Thomas Gillis letter 7/8/99	✓	
13	PLTF 1837	Rita Parkins letter to Black Hills Surgery Center 9/3/99	✓	

PLTF EX #	BATES	DESCRIPTION OF EXHIBITS	Travelers Stip Admission	Travelers Stip Foundation
14	PLTF 2	Torres Retainer Agreement with Jim Leach	✓	
15	PLTF 13-14	Leach letter to Carl Young 10/18/99	✓	
16	PLTF 11-12	Petition for Hearing 10/18/99	✓	
17	PLTF 1839-40	Answer	✓	
18	PLTF 1843-47	Employer's Interrogatories to Claimant	✓	
19	PLTF 26	Jim leach letter to Hickey November 8, 1999. No genuine dispute.	✓	
20	PLTF 1813-14	Employer/Insuror Proposed Scheduling Order 11/12/99	✓	
21	PLTF 1832-33	Scheduling Order 11/17/99 - prehearing set 4/17/00	✓	
22				
23	PLTF 1869-71	Affidavit of Dr, Dale Anderson and Report of Dr. Dale Anderson	✓	
24	PLTF 1866	Hickey letter to Parkins	✓	
25	PLTF 1881-89	Claimant's Answers to Employer/Insurer Interrogatories	✓	
26	PLTF 114-115	Employer and Insurer's Designation of Expert Witnesses	✓	
27	PLTF 28	11/8/99 Leach letter to Hickey. Enclosed are Interrogatories/RFP.	✓	
28				
29	PLTF 119-120	4/19/00 Notice of Hearing	✓	
30				
31	PLTF 691-703	5/18/00 Dr. John Lassegard deposition	✓	
32	PLTF 681-686	5/24/00 Dr. Curt Stone deposition	✓	
33				
34	PLTF 162-172	7/28/00 Hearing Brief of Beverly Enterprises	✓	
35				
36	PLTF 184-194	8/22/00 South Dakota Department of Labor Decision	✓	
37				
38				
39				

PLTF EX #	BATES	DESCRIPTION OF EXHIBITS	Travelers Stip Admission	Travelers Stip Foundation
40				
41				
42				
43	PLTF 1009	HICFA form re: Alice Torres and Dr. Anderson's billing		
44	PLTF 335	1/23/01 Leach Letter to Hickey re: fees and costs, with supporting documents.	✓	
45	PLTF 338-341 PLTF 343-352	Jim Leach's Statement of Costs dated 9/21/00 and Jim Leach's Itemized Time Statement dated 12/18/00	✓	
46	PLTF 473	3rd Settlement Breakdown dated 7/20/01, re: \$3,900.	✓	
47	PLTF 249	Leach letter to Fullenkamp re: fees, dated 7/23/01	✓	
48	PLTF 250	Fullenkamp letter to Leach dated 7/24/01 re: attorney's fees.		
49	PLTF 437	Hickey's fees breakdown dated 5/10/01		
50	PLTF 439	Leach letter to Mike Hickey dated 5/14/01 re: Hickey's billings.		
51	PLTF 718-35	Worker's Compensation Hearing Transcript June 1, 2000.		
52	PLTF 736	Exhibit 1 to Hearing Transcript - 1st Report of Injury	✓	
53	PLTF 737 to 741	Exhibit 2 to Hearing Transcript - Health Insurance Claim forms and bills	✓	
54	PLTF 742	Exhibit 3 to Hearing Transcript - Anesthesiology Bill	✓	
55	PLTF 743-744	Exhibit 4 to Hearing Transcript - Surgery Center Bill	✓	
56	PLTF 745	Exhibit 5 to Hearing Transcript - EOB payment by Great West for 1185.75	✓	
57	PLTF 746	Exhibit 6 to Hearing Transcript - Denial Letter	✓	
58	PLTF 747	Exhibit 7 to Hearing Transcript - Supervisor's Accident Investigation Report	✓	
59	PLTF 748-750	Exhibit 8 to Hearing Transcript - Claimant's 1st Request for Documents	✓	
60	PLTF 752-755	Exhibit 9 to Hearing Transcript - Claimant's First Interrogatories	✓	
61	#####	Summary of Medical Bills		
62	1000672-674	Excerpts from Wiggins 2000 Evaluation	✓	

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63	1000675-678	Excerpts from Wiggins 2001 Evaluation	✓	
64	1000692 and 1000695	Excerpts from Hogue 2000 Evaluation	✓	
65	1000688	Excerpts from Hogue 2001 Evaluation	✓	
66	1000711, 1000710, 1000718, 1000724, 1000728, 1000729, 1000731	Excerpts from Carl Young's Personnel File	✓	
67	1001634-640	Donald Florek 1999 Evaluation		✓
68	##### and 1001622-629	Defendant's Fourth Supplemental Responses to Plaintiff's First Request for Production of Documents to Defendants (3 pages); and Donald Florek 2000 Evaluation		
69	1001609-621	Donald Florek 2001 Evaluation		
70	1001630	Award letter to Donald Florek dated 1/26/01		
71	1000751-752, 1000753, 1000754	Excerpts from Worker's Compensation Best Practices		
72	PLTF 2251	CSS Web Page		
73	PLTF 2150	Constitution State Services: "Our Message"		
74	1000010	South Dakota Department of Labor Form: <u>Request For Extension of Time to Investigate Workers' Compensation Claim</u>		
75	##### 1000795 to 1000865	Defendants First Supplement to Defendants' Answers to Plaintiff's First Set of Interrogatories (2 pages). AND Beverly list of comp claims for carpal tunnel, and list of claims closed without payment.		
76	1000368, 1000404-406	Traveler's Guide to Policies, Programs and Practices - Cover page and Excerpt		
77	#####	Defendant Travelers Insurance Company's Responses to Plaintiff's 4th Set of Requests for Production of Documents, Responses Nos. 9, 10, 11, 13. (2 pages)		

PLTF EX #	BATES	DESCRIPTION OF EXHIBITS	Travelers Stip Admission	Travelers Stip Foundation
78	#####	Defendant's Responses Provided in the Master Discovery List, Requests No. 37 and 49. (2 pages)		
79	##### and 1001691 to 1001816	Defendant Travelers Insurance Company's Supplemental Responses to Plaintiff's Fourth Set of Request for Production of Documents signed by Pat Meyers 10/24/03 and attachments (1001691 to 1001816 - Base Pay and Incentive Compensation Program)		✓
80				
81				
82				
83				
84				
85				
86				
87				
88				
89				
90				
91				
92				
93	PLTF 2382, 2590, 2591	Travelers Annual Statement Balance Sheet Info		
94				
95	PLTF2631- 2632	Best's Key Rating Guide - Property Casualty Edition - Annual Statement Data		
96				
97				
98				
99	1001565- 1001578	Beverly Enterprises reported claims in South Dakota for 1998-2000		✓

PLTF EX #	BATES	DESCRIPTION OF EXHIBITS	Travelers Stip Admission	Travelers Stip Foundation
100				
101	PLTF 248	EOB re: payment to Alice Torres and Jim Leach in the amount of \$3,900.	✓	
102	PLTF 474	Check to Alice Torres and Jim Leach in the amount of \$3,900.	✓	
103	1001686	2001 Work comp score card for Beverly		✓
104				
105	DEF 542-554	Claim Service Agreement between AIG and CSS	✓	
106	DEF 732-	Policy Declaration Sheet	✓	
107	DEF 780-782	Addendum for MM deductible	✓	
108	#####	Defendant's Answer to Interrogatory #5, filed 2/7/03. Percentage of claims by amount.		
109	#####	<u>Cozine v. Midwest Coast Transport</u> , 454 NW2d 548, 555 (SD 1990). Employer provides medical care.		
110	#####	<u>Miller v. Lake Area Hospital</u> , 551 NW2d 817, 820 (SD 1996). Notice case.		
111	#####	<u>Loewen v. Hyman Freightways, Inc.</u> , 557 NW2d 764, 766 (SD 1997). Notice case.		
112	#####	<u>Vaughn v. John Morrell</u> , 2000 SD 31, ¶ 14, 606 NW2d 919. Gradual/progressive injury.		
113	#####	<u>Hanson v. Penrod Const. Co.</u> , 425 NW2d 396 (SD 1988). If Dr. says treatment needed, it is for the employer to prove otherwise.		
114	#####	<u>Brown v. Douglas School District</u> , 650 NW2d 264 (SD 2002). "A major contributing cause."		
115	#####	<u>Meyers v. Meyers Oil Co.</u> , 216 NW2d 820 (SD 1974). Insurance company is not beneficiary of private insurance.		
116	#####	SDCL 62-7-1. IME		
117	#####	SDCL 58-33-67. Unfair claim practices.		
117A	#####	SDCL 58-20-6.		
118	#####	SDCL 62-6-2. Reporting statute.		
119	#####	SDCL 62-6-3. Investigate within 20 days.		



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120	PLTF 2633-2648	AM Best Report regarding the Insurance Company for the State of Pennsylvania		
121	PLTF 485, 483, 229	Explanation of Benefits from Great West		
122	#####	Document entitled: Torres Medical Bills - 1 page (from Mike Hickey's file)		
123	#####	Alice Torres Medical Records Chronology - 5 pages (from Mike Hickey's file)		
124	#####	Document entitled: Timeline - 1 page (from Mike Hickey's file)		
125	#####	Letter to Rita Parkins from Mike Hickey dated 11/9/99 - 1 page (from Mike Hickey's file)		
126	#####	Email from Beth Ann Halvorson to Mike Hickey dated 12/7/99 - 1 page (from Mike Hickey's file)		
127	#####	Email from Beth Ann Halvorson to Mike Hickey dated 2/16/00 - 1 page (from Mike Hickey's file)		
128	#####	Note from Beth Ann to Mike Hickey re: the Torres file - 1 page (from Mike Hickey's file)		
129	#####	Document entitled: Alice Torres Pre-Hearing Conference Information - 1 page (from Mike Hickey's file)		
130	#####	Draft of Employer/Insurer's Answers to Claimant's First Interrogatories - 4 pages (from Mike Hickey's file)		
131	#####	Document entitled: Interrogatory #3: Interview/Statement - 1 page (from Mike Hickey's file)		
132	#####	Draft of Employer/Insurer's Responses to Claimant's First Request for Production - 3 pages (from Mike Hickey's file)		
133	#####	Memo from Beth Ann to Mike Hickey, dated 2/21/01 - 1 page (from Mike Hickey's file)		
134	#####	5 pages from Mike Hickey's file (first page is a job description for a dietary aid)		
135	#####	Traveler's Insurance News Release (1 page)		
136	#####	Various Score Cards and Performance Goals (11 pages)		

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137	#####	Notice of Deposition and Subpoena Duces Tecum re: Armentano, dated 12/24/03 (3 pages)		
138	#####	Constitution State Services Balance Sheet (1 page)		
139	1001887	Excerpt from Vincent Armentano's Personnel File - Overall Performance Rating (1 page)		
140	1001889	Excerpt from Vincent Armentano's Personnel File - Letter to Mr. Armentano dated 1/30/98 (1 page).		
141	1001892	Excerpt from Vincent Armentano's Personnel File - Interoffice Memorandum dated 8/3/99 (1 page).		



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 9 day of January, 2004, he ~~mailed~~ <sup>hand delivered</sup> a true and correct copy of

the foregoing **PLAINTIFF'S AMENDED TRIAL EXHIBIT LIST** to:

Patricia Meyers  
Costello, Porter, Hill, Heisterkamp,  
Bushnell & Carpenter  
PO Box 290  
Rapid City, SD 57709

and that the same was provided by United States Mail, postage prepaid.

  
Mike Abourezk